

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION**

-----X		
In re:	:	Chapter 11
	:	
CIRCUIT CITY STORES, INC.,	:	Case No. 08-35653-KRH
<u>et al.</u> ,	:	
	:	Jointly Administered
Debtors.	:	
-----X		

**OBJECTION OF THE KIMCO LANDLORDS TO THE DEBTORS' PROPOSED
CURE AMOUNTS RELATING TO THE ASSUMPTION OF CERTAIN
UNEXPIRED NON-RESIDENTIAL REAL PROPERTY LEASES**

This Objection to the Debtors' Proposed Cure Amounts Relating to the Assumption of Certain Unexpired Non-Residential Real Property Leases (the "Cure Objection") is submitted on behalf of the Kimco Landlords (the "Kimco Landlords") identified on Exhibit 1 attached hereto. In support of the Cure Objection, the Kimco Landlords respectfully state as follows:

1. On or about November 25, 2008, the Debtors filed the *Debtors' Motion for Orders Under 11 U.S.C. §§ 105, 363, and 365 (I) Approving Bidding and Auction Procedures for Sale of Unexpired Nonresidential Real Property Leases for Closing Stores, (II) Setting Sale Hearing Date, and (III) Authorizing and Approving (A) Sale of Certain Nonresidential Real Property Leases Free and Clear of Liens, Claims, and Encumbrances, (B) Assumption and Assignment of Certain Unexpired Nonresidential Real Property Leases, and (C)*

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Counsel for Kimco Landlords

Lease Rejection Procedures (the "Sale Motion"), which listed on Exhibit B thereto the Debtors' proposed cure amounts for, among others, each of the unexpired residential leases identified on Exhibit 1 hereto (the "Kimco Leases").

2. The Kimco Landlords hereby object to the Debtors' proposed cure amounts for the Kimco Leases. According to the books and records of the Kimco Landlords, the amounts outstanding under the Kimco Leases are set forth in the corresponding column titled "Landlord's Cure Amount" on Exhibit 1. Details of the Landlord's Cure Amount for each of the Kimco Leases are provided in the Lease Summary Reports, attached hereto as Exhibit 2.

3. In addition, to the extent that rent, attorneys' fees,¹ or other charges continue to accrue, and/or the Kimco Landlords suffer other pecuniary losses with respect to the Kimco Leases, the Kimco Landlords hereby reserve their right to amend the Landlord's Cure Amounts to reflect such additional amounts or to account for reconciliations and adjustments which may not have yet been billed or have not yet become due under the terms of the Kimco Leases.

WHEREFORE, the Kimco Landlords respectfully request that the Court enter an order (i) requiring the Debtors to pay the cure amounts set forth in the column titled "Landlord's Cure Amounts" on Exhibit 1, plus any additional amounts or pecuniary losses that hereafter accrue (including reasonable attorneys' fees), in connection with the assumption by the Debtors

¹ The Debtors are required, pursuant to Section 365(b)(1) of the Bankruptcy Code, to cure all outstanding defaults under the Kimco Leases prior to assumption thereof. In conjunction with this duty, the Debtors must compensate the Kimco Landlords for any actual pecuniary loss, including the payment of attorneys' fees. See 11 U.S.C. §365(b)(1)(B). Attorneys' fees due under the Kimco Leases are compensable. See, e.g., LJC Corp. v. Boyle, 768 F.2d 1489, 1494-6 (D.C. Cir. 1985); Andrew v. KMR Corp., 17 B.R. 438, 439 (Bankr. 9th Cir. 1982); In re BAB Enterprises, Inc., 100 B.R. 982 (Bankr. W.D. Tenn. 1989); In re Westview 74th St. Drug Corp., 59 B.R. 747, 752-4 (Bankr. S.D.N.Y. 1986); In re Ribs of Greenwich Vill., Inc., 57 B.R. 319, 321 (Bankr. S.D.N.Y. 1986).

of the Kimco Leases; and (ii) granting such other and further relief as the Court deems just and proper.

Dated: December 9, 2008

CHRISTIAN & BARTON, LLP

By: /s/ Jennifer M. McLemore
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-and-

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Fax: 212-808-6001

Attorneys for the Kimco Landlords

CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of December, 2008, I caused a copy of the foregoing to be served by electronic means on the "2002" and "Core" lists and through the ECF system.

/s/ Jennifer M. McLemore
Jennifer M. McLemore

EXHIBIT 1

Kimco Landlord's Cure Amounts

<u>Kimco Landlord</u>	<u>Store No.</u>	<u>Location</u>	<u>Debtors' Proposed Cure Amount</u>	<u>Landlord's Cure Amount</u>
PL Mesa Pavilions LLC	3337	Mesa, CA	\$10,768.00	\$86,254.23
Shops at Kildeer, LLC	3795	Kildeer, IL	\$20,839.00	\$100,545.78
GC Acquisition Corp.	1813	Columbus, OH	\$12,124.00	\$69,437.44

EXHIBIT 2

Lease Summaries

12/03/08 KIM2
13:58:50 QPADEV002VKimco 8.1 Production Database
Lease SummaryARLAD04I AR4151-A Page 1
KIM2 V980924 SUSANCTITenant TCIRCCI00 Circuit City Stores, Inc.
Project SAZM143A MESA PAVILIONS-NORTH
Lease TCIRCCI00 Circuit CityScan
From 1/01/87 To 12/03/08

Deposits All Zero

Date	Document	Description	Amount	Outstanding
7/28/08	C 0863004 001	4541529 OP Cam	29596.46-	72.36-
9/05/08	C 0886331 001	4554784 OP Cam	29596.46-	72.36-
9/30/08	C 0893821 001	4562555 OP	29596.46-	72.36-
11/01/08	R 1214445 001	Common Area Maintenance	1250.19	1250.19
11/01/08	R 1214445 002	Sales Tax	28.13	28.13
11/01/08	R 1214445 003	Base Rent	27624.23	27624.23
11/01/08	R 1214445 004	Sales Tax	621.55	621.55
11/05/08	R 1231747 002	Real Estate Tax Reconciliation	25468.85	25468.85
11/05/08	R 1231747 003	Sales Tax	573.05	573.05
11/15/08	R 1232188 001	Late Fee	1381.21	1381.21
12/01/08	R 1237245 001	Common Area Maintenance	1250.19	1250.19
12/01/08	R 1237245 002	Sales Tax	28.13	28.13
12/01/08	R 1237245 003	Base Rent	27624.23	27624.23
12/01/08	R 1237245 004	Sales Tax	621.55	621.55

Prior .00

Net

86254.23

End

86254.23

Document
Proof report

12/03/08 KIM2
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Lease Summary

ARLAD04I AR4151-A Page 1
KIM2 V980924 SUSANCTI

Tenant TCIRCCI00 Circuit City Stores, Inc. Scan
Project SILK1397/ SHOPS AT KILDEER From 1/01/87 To 12/03/08
Lease LCIRCCI00 Circuit City Deposits All Zero

Date	Document	Description	Amount	Outstanding
11/01/08	R 1210278 001	Base Rent	44735.50	44735.50
11/01/08	R 1210278 003	Common Area Maintenance	5537.39	5537.39
12/01/08	R 1242554 001	Base Rent	44735.50	44735.50
12/01/08	R 1242554 003	Common Area Maintenance	5537.39	5537.39
Prior			.00	Net
			100545.78	End
				100545.78

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Lease Summary

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KIM2 V980924 SUSANCTI

Tenant TCIRCCI00 Circuit City Stores, Inc.
Project SOHC0407/ WEST BROAD PLAZA
Lease LCIRCCI00 Circuit City

Scan
From 1/01/87 To 12/03/08

Deposits All Zero

Date	Document	Description	Amount	Outstanding
11/01/08	R 1210949 001	Base Rent	33372.72	33372.72
11/01/08	R 1210949 002	Common Area Maintenance	1346.00	1346.00
12/01/08	R 1243240 001	Base Rent	33372.72	33372.72
12/01/08	R 1243240 002	Common Area Maintenance	1346.00	1346.00
Prior			69437.44	69437.44
		Net		
		End		

Proof report